

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EDUARDO CORTEZ, on behalf of
himself and all others similarly situated,

Plaintiffs,

V.

CALIFORNIA MUFFLERS & BRAKES, INC.,
and MAXIMILIANO CHAVEZ,
FERNANDO CHAVEZ, and JESUS NUNEZ,
individually,
Defendants.

Case No. 08 C 415

Judge Grady

Magistrate Judge Keys

JURY TRIAL REQUESTED

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT
AGAINST DEFENDANTS CALIFORNIA MUFFLERS & BRAKES, INC.,
MAXIMILIANO CHAVEZ, FERNANDO CHAVEZ AND JESUS NUNEZ**

Plaintiff, Eduardo Cortez, on behalf of himself and all others similarly situated, through his attorneys, Barlow, Kobata & Denis, moves for an Order of Default granting judgment in Plaintiff's favor against Defendants California Mufflers & Brakes, Inc., and Maximiliano Chavez, Fernando Chavez, and Jesus Nunez, individually ("Defendants") for violating the Fair Labor Standards Act, 29 U.S.C. § 251 *et. seq.* ("FLSA"), the Illinois Minimum Wage Law, 820 ILCS 105/1 *et. seq.* ("IMWL"), and for Retaliation under the FLSA, awarding Plaintiff the relief requested in the First Amended Complaint, and setting a date for Plaintiff to submit written proof of damages, attorneys' fees and costs, and other damages. In support of this motion, Plaintiff states as follows:

1. On January 18, 2008, Plaintiff filed a Complaint against the Defendants alleging

violations of the FLSA and IMWL for Defendants' failure to pay overtime wages to Plaintiff and a class of similarly situated employees for all hours worked.

2. The Plaintiff served the Defendant Jesus Nunez via substitute service on his wife, Irma Nunez, who is a clerk in his office, on January 23, 2008. See Affidavit of Special Process Server, par. 3, attached hereto as Exhibit A. Pursuant to Rule 4(d)(3) Defendant's Answer to the Complaint was due on February 12, 2008. To date no Answer has been filed.

3. The Plaintiff served the Defendant Fernando Chavez personally on February 16, 2008. See Affidavit of Special Process Server, par. 3, attached hereto as Exhibit B. Pursuant to Rule 4(d)(3) Defendant's Answer to the Complaint was due on March 7, 2008. On March 5, 2008, Defendant Fernando Chavez filed his Answer to the Complaint.

4. The Plaintiff served Defendant Maximiliano Chavez via substitute service on his wife, Magnolia Zebeda, who is a clerk in his office, on February 16, 2008. See Affidavit of Special Process Server, par. 3, attached hereto as Exhibit C. Pursuant to Rule 4(d)(3) Defendant's Answer to the Complaint was due on March 7, 2008. To date no Answer has been filed.

5. The Plaintiff served California Mufflers & Brakes, Inc. via substitute service on Magnolia Zebeda, the wife of the registered agent Maximiliano Chavez, who is a clerk in his office. See Affidavit of Special Process Server, par. 3, attached hereto as Exhibit D. Pursuant to Rule 4(d)(3) Defendant's Answer to the Complaint was due on March 7, 2008. To date no Answer has been filed.

6. On February 19, 2008, prior to Defendants filing their Answers to the Complaint, Plaintiff timely filed his First Amended Complaint. Plaintiff served the Defendants via regular mail. Pursuant to Rule 15(a)(3) Defendants, California Mufflers and Brakes, Inc., Fernando

Chavez, and Maximiliano Chavez's Answers to the First Amended Complaint were due on March 7, 2008. Defendant Jesus Nunez's Answer to the First Amended Complaint was due on February 29, 2008. To date no Answer has been filed by any Defendant.

7. The Defendants' failure to timely Answer the First Amended Complaint entitles Plaintiff to a default judgment with respect to the allegations of the First Amended Complaint under Rule 55(b)(2).

7. As part of the Order granting Plaintiff's motion, Plaintiff also requests a date to submit written proof of damages and attorneys' fees and costs.

WHEREFORE, Plaintiff requests that an Order of Default be entered against the Defendants California Mufflers & Brakes, Inc. and Maximiliano Chavez, Fernando Chavez and Jesus Nunez, individually, that judgment be entered in Plaintiff's favor, and that a date to submit written proof of damages, attorneys' fees and costs, and other damages be set.

Dated: March 18, 2008

Respectfully submitted,

s/ Jessica Butterfield
Marty Denis
Jessica Butterfield
Barlow, Kobata & Denis
525 W. Monroe, Suite 2360
Chicago, IL 60661

*Attorneys for Plaintiff Eduardo Cortez, and
all others similarly situated*